

Walk into any airport or coffee house and you may find it hard to imagine a world without wireless telephones.

Today, nine out of 10 American adults—more than 262 million subscribers—own a cell phone, a 12 percent increase from 2006.

This enormous growth in the wireless industry poses a key challenge to lawmakers and other officials: Who should do the regulating? Oversight of the cell phone industry has opened a rift among states, the federal government and the cellular industry. Some lawmakers question whether states should be regulating the wireless industry at all and others see it as a straightforward consumer protection issue.

“For global communications, what we do not want is a hodgepodge of state laws,” says Wisconsin Representative Phil Montgomery. He believes “the market has addressed many



REPRESENTATIVE
PHIL MONTGOMERY
WISCONSIN

of the consumer issues. In fact, 98 percent of consumers can now choose from three or more carriers.”

But others think states have a role in ensuring a fair shake for consumers. Minnesota Senator Mary Olson introduced legislation in 2008—the Minnesota Wireless Telephone Consumer Protection Act—aimed at addressing consumer concerns with cell phone company practices.

“The wireless industry has become known for adding changes to bills without their customers’ prior knowledge or consent,” she



SENATOR
MARY OLSON
MINNESOTA

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Whose Job Is It?

A federal bill is pending, but some state lawmakers believe they should have a role in looking out for consumers.



says. “Appropriate regulations will ensure that customers are not unfairly surprised by charges on their bill. This seems like a no brainer, and certainly is no more than we expect from other industries.”

To date only Kentucky, Louisiana and the U.S. Virgin Islands have enacted wireless consumer protection laws.

The wireless industry, not surprisingly, wants to avoid a thicket of state laws requiring companies to operate differently in different states. Wireless companies want federal legislation that lays out a single set of rules, says Dane Snowden of CTIA, the wireless association.

“One set of consistent standards is good for the consumer,” he says. “We also think it’s good for the industry.”

The industry has developed a 10-point vol-

untary consumer code that its members think address many of the key concerns: disclosure of exactly what the customer is getting, a trial period, itemized bills, prompt response to complaints and more.

State lawmakers say they’ve taken action, or at least discussed legislation, in part because the federal government has not. But a bill sponsored by U.S. Representative Edward J. Markey, chairman of the House Subcommittee on Telecommunications and the Internet, would preempt state laws in favor of a federal wireless consumer bill of rights. U.S. senators Mark Pryor of Arkansas and Amy Klobuchar of Minnesota also have introduced a wireless consumer protection bill.

CTIA’s Snowden and other groups support national standards with enforcement in the hands of the states. “There is a role for



states, and the state role should be through attorneys general.”

CONSUMER BENEFITS

Americans are spending a lot on cell phones. According to the Bureau of Labor Statistics’ Consumer Expenditure Survey, the yearly cost went from \$210 in 2001 to \$524 in 2006, an increase of 149 percent. A recent study of Internet leaders, analysts and others anticipate major technology advances as the wireless phone becomes a leading device for online access.

When it comes to regulation, whether at the state or federal level, the focus is on:

Towers: More telecommunications towers will be needed in the coming years to prevent dead zones (areas where there is no telephone signal) and dropped calls (calls that end with-

out notice). But locating the towers can be controversial because of fears they will drive down property values, emit harmful radio waves and obstruct views. Co-location—where a tower company leases space on a cell tower to a wireless carrier—is an effective alternative to building new cell towers.

The industry has asked the FCC to step in to compel local jurisdictions to make timely decisions on towers.

Early termination fees: Companies usually charge fees to customers who end their service before the end of a contract, which often draws complaints. Snowden points out that U.S. cell phone companies, unlike those in other parts of the world, offer people low-cost and free phones in exchange for signing contracts. “Someone has to pay for that phone,” he says. Others say the fees are

designed to lock customers into a contract and prevent competition.

Four of the major wireless providers that cover 94 percent of customers have agreed to prorate their termination fees—charging less as contracts get closer to the end—and allow customers to make changes to their plans without incurring new fees. Some companies also offer pre-paid and month-to-month plans.

Privacy: Some customers complain that companies make personal information—telephone numbers, records of calls and billing information—available to mobile advertisers. The resulting unsolicited advertising received on wireless telephones is often a nuisance, viewed as similar to spam e-mail.

Access: Wireless networks, particularly those that provide broadband capacity, still lag in rural areas of the country and can hamper economic growth there. Lawmakers are considering a few options to address the problem, including public-private partnerships, new tax policies and greater use of unlicensed spectrum that the FCC could make available.

REGULATION

All these issues come back to the question of who should take the lead in regulation. The current landscape is complex. The FCC determines how many companies can compete, what technologies they may use, and how they work with other telephone companies. A federal law prohibits state and local governments from regulating entry into the market and prices charged by commercial wireless carriers.

But it does allow states to regulate “other terms and conditions of commercial mobile services,” such as wireless industry contracts, and their terms and exclusions.

“Five or even three years ago, I might have thought that the cell phone industry needed to be more heavily regulated. I do not believe that is the case today,” says Representative Daniel Adams Eaton of New Hampshire. “As of about two years ago, the cell phone indus-



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try started doing an incredibly good job of self-regulating and policing itself.”

But Arizona Senator Pamela Gorman believes it would be useful to have minimum customer service standards.

“It is important that both parties in a cellular contract honor the terms of the contract. There need to be remedies for consumers if problems arise. What we don’t want is a situation where cell companies have all the power to enforce their contracts and none of the liability if they do not honor them.”

Like Gorman, Senator Karin Brownlee from Kansas thinks the state has a role.

“We once referred to the wireless industry as competitive, but we are locked into contracts and held hostage once the cell phone is purchased,” she says, and wants the industry to be more responsive to customers.

If federal legislation passes in the new Congress, however, it may end much of the debate over regulation. Although states still may have authority in some areas, such as contract terms and the process of siting cell towers, a new federal law will likely preempt state authority over most aspects of the cell phone industry.

But a resolution of the issue of state vs. federal regulation may remain in limbo a while longer, in the view of Brad Ramsay, general counsel for the National Association of Regulatory Utility Commissioners.

“I predict no congressional wireless regulation bills will pass until the very end of 2009 or in 2010.”



CHECK OUT NCSL’s position on regulation of the wireless industry at www.ncsl.org/magazine.